

FILED  
COURT OF APPEALS  
DIVISION II

No. 49056-1-II

2017 MAY -8 AM 11:33

STATE OF WASHINGTON  
BY AP COURT OF APPEALS OF THE STATE OF  
~~DEPUTY~~ WASHINGTON DIVISION II

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IN RE THE ESTATE OF LEEANNA MICKELSON

HEATHER MICKELSON,  
*Appellant,*

*v.*

JAMES A. MICKELSON,  
*Respondent.*

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REPLY BRIEF OF APPELLANT HEATHER MICKELSON

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By:

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## I. TABLE OF CONTENTS

I.	TABLE OF CONTENTS.....	i
II.	TABLE OF AUTHORITIES.....	ii
III.	ARGUMENT ON REPLY.....	1
	a. The community property agreement does not prevent administration of an estate.....	1
IV.	CONCLUSION.....	4
V.	CERTIFICATE OF SERVICE AND FILING.....	5

## II. TABLE OF AUTHORITIES

### Cases:

*Norris v Norris*, 29 Wn. 2d 124, 129; 622 P.2d 816 (1980)

*In re Estate of Wittman*, 58 Wn.2d 841, 365 P.2d 17 (1961)

*In re Estate of Lyman*, 7 Wn. App. 945, 503 P.2d 1127 (1972)

*In re Estate of Leeanna Ruth Mickelson*, King County Superior Court #17-4-02916-0 SEA (2017)

### Statutes:

RCW 26.16.120

RCW 11.28.340

### III. ARGUMENT ON REPLY

In the trial court, the Petitioner/ Appellant filed a Petition for the adjudication of intestacy and heirship pursuant to RCW 11.28.340. After a number of skirmishes, the trial court determined that “there is no legal basis for the Petition to move forward.” CR 28-29.

The basis for the denial was explained by the Commissioner as follows: “[T]he Community Property Agreement ... controls ... so there is no basis for probate.” RP 4:23-24 (6/17/16). Respondent adopts the trial court’s reasoning, arguing that the existence of the Community Property Agreement obviates the need for probate. Respondent’s Brief, p. 13.

**a. The community property agreement does not prevent administration of an estate**

In fact, Washington law is contrary to the trial court’s and the Respondent’s conclusions. **“The fact that community property passes to the surviving spouse at death does not prevent administration of the community property in the deceased spouse's estate.”** Norris v. Norris, 94 Wn. 2d 124, 129; 622 P.2d 816 (1980)(emph. added).

For some reason the attorneys for Respondent did not find or cite Norris. Nonetheless, Norris explains:

The property remains community in nature until the spouse's death, and the possibility of administration is explicitly acknowledged in RCW 11.02.070:

The whole of the community property shall be subject to probate administration for all purposes of this title...

The courts of this state have, in the past, examined the effect of community property agreements in the course of probate proceedings. *See, e.g., In re Estate of Wittman*, [58 Wn.2d 841, 365 P.2d 17 (1961)]; *In re Estate of Lyman*, 7 Wn. App. 945, 503 P.2d 1127 (1972). ...

There is no general impediment to the probate of a decedent's estate that consists solely of community property subject to a community property agreement. The community property agreement imposes no limitation on the disposition of the property by the surviving spouse after the death.

Norris, 94 Wn. 2d at 129-30. The question naturally arises: **Why would anyone open a probate for an estate where the property already has passed to the surviving spouse pursuant to a community property agreement?** The answer is simple, and also provided by Norris:

The right to probate the deceased spouse's estate is also implied in the court's power pursuant to RCW 26.16.120 to "set aside or cancel such [community property] agreement for fraud or under some other recognized head of equity jurisdiction."

Norris, 94 Wn. 2d at 130. Interestingly, that is exactly what is occurring here. The reason Appellant sought an adjudication of intestacy is because she is concerned that her mother, who was dying of cancer when she allegedly signed the Community Property Agreement, was incompetent and/or subject to undue influence. (These facts are only hinted at in the record. But this appeal does not rest on these facts. They are offered only to illustrate why the rule, proposed by the Respondents, that the existence of a community property agreement precludes probate, must be incorrect.)

Pursuant to RCW 11.28.340, Petitioner/Appellant has the right to flush out any Will, and if none is forthcoming, present the Court with information relating to her concerns about the community property agreement. The Court's refusal to enter the adjudication of intestacy was in error.

Petitioner/Appellant is not a lawyer, and certainly made a number of mistakes in the proceedings below.<sup>1</sup> She will employ an attorney for any further litigation. But the fact remains, she was

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<sup>1</sup> The Respondent accuses the undersigned of "lying" and other wrongdoing. I deny these allegations. I never lied to the Court, but I was confused. The Respondent's smears should not deter this Court from ruling that the order adjudicating intestacy should have been entered.

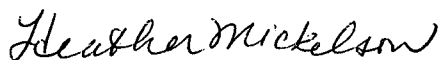
entitled to an order adjudicating the intestacy of her mother. There will be no prejudice to Respondent. If the Community Property Agreement was properly executed, the Respondent will receive the decedent's Estate, and under RCW 11.28.340 the issues regarding that Agreement will be laid to rest. On the other hand, if the Community Property Agreement was wrongfully procured, the Respondent suffers no prejudice in losing what was illicitly gained.

#### IV. CONCLUSION

Decedent Leeanna Ruth Mickelson passed away on May 1, 2012 without a will. *In re Estate of Leeanna Ruth Mickelson*, King County Superior Court #17-4-02916-0 SEA (2017). Petitioner/Appellant was entitled to an order adjudicating the intestacy of her mother. The Court's refusal to enter the adjudication of intestacy was in error and this ruling should be reinstated.

Dated this 5<sup>th</sup> day of May, 2017.

Respectfully submitted,



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DIVISION II

2017 MAY -8 AM 11:33 CERTIFICATE OF SERVICE AND FILING

STATE OF WASHINGTON

BY AS I, the undersigned, does hereby declare under the penalty of perjury under the laws of the State of Washington that on the 6th day of May, 2017, the undersigned filed the **REPLY BRIEF OF APPELLANT** by U.S. First Class mail, pre-paid, to:

Washington State Court of Appeals, Division II  
950 Broadway, Suite 300  
Tacoma, WA 98402

The undersigned further declares that on the 6<sup>th</sup> of May, 2017, the above-identified pleading was served upon Christie C. Goeller, Attorney for Respondent James A. Mickelson via email and regular U.S. mail at:

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And additional copies were served upon the following individuals via regular U.S. mail at:

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